

Decision Notice

Decision 189/2018: Ms D and North Ayrshire Council

Road defect notifications: failure to respond within statutory timescales

Reference No: 201801382

Decision Date: 20 November 2018



Scottish Information
Commissioner

Summary

On 22 February 2018, Ms D asked North Ayrshire Council (the Council) for information about road defect notifications. This decision finds that the Council failed to respond to the request within the timescale allowed by the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs). The decision also finds that the Council failed to comply with Ms D's requirement for review within the timescale set down by FOISA and the EIRs.

Background

Date	Action
22 February 2018	Ms D made an information request to the Council.
27 March 2018	The Council asked Ms D to clarify the request, which it considered had been formulated in too general a manner. It specified the respects in which it considered clarification was required.
30 March 2018	Ms D provided clarification as requested by the Council.
	The Council did not respond to the information request.
17 June 2018 & 10 July 2018	Ms D wrote to the Council, requiring a review in respect of its failure to respond.
	Ms D did not receive a response to her requirements for review.
20 August 2018	Ms D wrote to the Commissioner's Office, stating that she was dissatisfied with the Council's failures to respond and applying to the Commissioner for a decision in terms of section 47(1) of FOISA. The enforcement provisions of FOISA apply to the enforcement of the EIRs, subject to specified modifications – see regulation 17.
1 October 2018	The Council was notified in writing that an application had been received from Ms D and was invited to comment on the application.
22 October 2018	The Commissioner received submissions from the Council. These submissions are considered below.

Commissioner's analysis and findings

1. It is apparent from the terms of the request that at least some of the information caught by it will be environmental information as defined by regulation 2(1) of the EIRs. In *Decision 218/2007 Professor A D Hawkins and Transport Scotland*¹, the Commissioner confirmed, at

¹ <http://www.itspublicknowledge.info/ApplicationsandDecisions/Decisions/2007/200600654.aspx>

paragraph 51, that where environmental information is concerned, there are two separate statutory frameworks for access to that information and, in terms of the legislation, an authority is required to consider the request under both FOISA and the EIRs.

2. Section 10(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the request to comply with a request for information. This is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 5(2)(a) of the EIRs.
3. It is a matter of fact that the Council did not provide a response to Ms D's request for information within 20 working days, so the Commissioner finds that it failed to comply with section 10(1) of FOISA and regulation 5(2)(a) of the EIRs.
4. Section 21(1) of FOISA gives Scottish public authorities a maximum of 20 working days following the date of receipt of the requirement to comply with a requirement for review. Again, this is subject to qualifications which are not relevant in this case. The same timescale is laid down by regulation 16(4) of the EIRs.
5. It is a matter of fact that the Council did not provide a response to Ms D's requirement for review within 20 working days, so the Commissioner finds that it failed to comply with section 21(1) of FOISA and regulation 16(4) of the EIRs.
6. The Council responded to Ms D's requirement for review on 2 November 2018, so the Commissioner does not require it to take any further action in relation to Ms D's application.
7. The Council has explained to the Commissioner the reasons why it fell behind in responding to information requests, and what action it has taken to remedy this situation. The Commissioner notes that the Council apologised to Ms D for its failure to comply with her request within the statutory timescales and for the manner in which it dealt with the request.

Decision

The Commissioner finds that North Ayrshire Council (the Council) failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) and the Environmental Information (Scotland) Regulations 2004 (the EIRs) in responding to the information request made by Ms D. In particular, the Council failed to respond to Ms D's request for information and requirement for review within the timescales laid down by sections 10(1) and 21(1) of FOISA and regulations 5(2) and 16(4) of the EIRs.

The Commissioner does not require North Ayrshire Council to take any action in respect of these failures, in response to Ms D's application, given that a review outcome has been issued.

Appeal

Should either Ms D or the Council wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Council fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Council has failed to comply. The Court has the right to inquire into the matter and may deal with the Council as if it had committed a contempt of court.

Euan McCulloch
Deputy Head of Enforcement

20 November 2018

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